

INTANGIBLE INCOME AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies provisions related to payment of income tax on global intangible low-taxed income.

Highlighted Provisions:

This bill:

- ▶ adds global intangible low-taxed income to the definition of unadjusted income in the Corporate Franchise and Income Taxes code;
- ▶ creates a subtraction from unadjusted income of corporate taxpayers for global intangible low-taxed income;
- ▶ creates a subtraction from adjusted gross income of individual taxpayers for global intangible low-taxed income;
- ▶ creates a subtraction from unadjusted income of estate and trust taxpayers for global intangible low-taxed income; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

- 59-7-101**, as last amended by Laws of Utah 2018, Second Special Session, Chapters 2 and 3
- 59-7-106**, as last amended by Laws of Utah 2017, Chapter 389
- 59-10-114**, as last amended by Laws of Utah 2018, Chapters 190 and 370
- 59-10-202**, as last amended by Laws of Utah 2018, Chapter 190

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-7-101** is amended to read:

59-7-101. Definitions.

As used in this chapter:

(1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and 59-7-106.

(2) (a) "Affiliated group" means one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(i) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(ii) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

(b) "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state.

(c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(3) "Apportionable income" means adjusted income less nonbusiness income net of related expenses, to the extent included in adjusted income.

(4) "Apportioned income" means apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.

(5) "Business income" means the same as that term is defined in Section 59-7-302.

(6) (a) "Captive real estate investment trust" means a real estate investment trust if:

(i) the shares or beneficial interests of the real estate investment trust are not regularly traded on an established securities market; and

(ii) more than 50% of the voting power or value of the shares or beneficial interests of the real estate investment trust are directly, indirectly, or constructively:

(A) owned by a controlling entity of the real estate investment trust; or

(B) controlled by a controlling entity of the real estate investment trust.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

(7) (a) "Common ownership" means the direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

(i) a parent-subsidary controlled group as defined in Section 1563, Internal Revenue Code, except that 50% shall be substituted for 80%;

(ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue Code; or

(iii) three or more corporations each of which is a member of a group of corporations described in Subsection (2)(a)(i) or (ii), and one of which is:

(A) a common parent corporation included in a group of corporations described in Subsection (2)(a)(i); and

(B) included in a group of corporations described in Subsection (2)(a)(ii).

(b) Ownership of outstanding voting stock shall be determined by Section 1563, Internal Revenue Code.

(8) (a) "Controlling entity of a captive real estate investment trust" means an entity that:

(i) is treated as an association taxable as a corporation under the Internal Revenue Code;

(ii) is not exempt from federal income taxation under Section 501(a), Internal Revenue Code; and

(iii) directly, indirectly, or constructively holds more than 50% of:

(A) the voting power of a captive real estate investment trust; or

(B) the value of the shares or beneficial interests of a captive real estate investment trust.

(b) "Controlling entity of a captive real estate investment trust" does not include:

(i) a real estate investment trust, except for a captive real estate investment trust;

(ii) a qualified real estate investment subsidiary described in Section 856(i), Internal Revenue Code, except for a qualified real estate investment trust subsidiary of a captive real estate investment trust; or

(iii) a foreign real estate investment trust.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "established securities market."

95 (9) "Corporate return" or "return" includes a combined report.

96 (10) "Corporation" includes:

97 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
98 Code; and

99 (b) other organizations that are taxed as corporations for federal income tax purposes
100 under the Internal Revenue Code.

101 (11) "Dividend" means any distribution, including money or other type of property,
102 made by a corporation to its shareholders out of its earnings or profits accumulated after
103 December 31, 1930.

104 (12) (a) "Doing business" includes any transaction in the course of its business by a
105 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
106 this state.

107 (b) Except as provided in Subsection 59-7-102(3), "doing business" includes:

108 (i) the right to do business through incorporation or qualification;

109 (ii) the owning, renting, or leasing of real or personal property within this state; and

110 (iii) the participation in joint ventures, working and operating agreements, the
111 performance of which takes place in this state.

112 (13) "Domestic corporation" means a corporation that is incorporated or organized
113 under the laws of this state.

114 (14) (a) "Farmers' cooperative" means an association, corporation, or other
115 organization that is:

116 (i) (A) an association, corporation, or other organization of farmers or fruit growers; or

117 (B) an association, corporation, or other organization that is similar to an association,
118 corporation, or organization described in Subsection (14)(a)(i)(A); and

119 (ii) organized and operated on a cooperative basis to:

120 (A) (I) market the products of members of the cooperative or the products of other
121 producers; and

122 (II) return to the members of the cooperative or other producers the proceeds of sales
123 less necessary marketing expenses on the basis of the quantity of the products of a member or
124 producer or the value of the products of a member or producer; or

125 (B) (I) purchase supplies and equipment for the use of members of the cooperative or

126 other persons; and

127 (II) turn over the supplies and equipment described in Subsection (14)(a)(ii)(B)(I) at
128 actual costs plus necessary expenses to the members of the cooperative or other persons.

129 (b) (i) Subject to Subsection (14)(b)(ii), for purposes of this Subsection (14), the
130 commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
131 Rulemaking Act, shall define:

132 (A) the terms "member" and "producer"; and

133 (B) what constitutes an association, corporation, or other organization that is similar to
134 an association, corporation, or organization described in Subsection (14)(a)(i)(A).

135 (ii) The rules made under this Subsection (14)(b) shall be consistent with the filing
136 requirements under federal law for a farmers' cooperative.

137 (15) "Foreign corporation" means a corporation that is not incorporated or organized
138 under the laws of this state.

139 (16) (a) "Foreign operating company" means a corporation that:

140 (i) is incorporated in the United States;

141 (ii) conducts at least 80% of the corporation's business activity, as determined under
142 Section 59-7-401, outside the United States; and

143 (iii) as calculated in accordance with Part 3, Allocation and Apportionment of Income -
144 Utah UDITPA Provisions, has:

145 (A) at least \$1,000,000 of payroll located outside the United States; and

146 (B) at least \$2,000,000 of property located outside the United States.

147 (b) "Foreign operating company" does not include a corporation that qualifies for the
148 Puerto Rico and possession tax credit as provided in Section 936, Internal Revenue Code.

149 (17) (a) "Foreign real estate investment trust" means:

150 (i) a business entity organized outside the laws of the United States if:

151 (A) at least 75% of the business entity's total asset value at the close of the business
152 entity's taxable year is represented by:

153 (I) real estate assets, as defined in Section 856(c)(5)(B), Internal Revenue Code;

154 (II) cash or cash equivalents; or

155 (III) one or more securities issued or guaranteed by the United States;

156 (B) the business entity is:

157 (I) not subject to income taxation:
158 (Aa) on amounts distributed to the business entity's beneficial owners; and
159 (Bb) in the jurisdiction in which the business entity is organized; or
160 (II) exempt from income taxation on an entity level in the jurisdiction in which the
161 business entity is organized;
162 (C) the business entity distributes at least 85% of the business entity's taxable income,
163 as computed in the jurisdiction in which the business entity is organized, to the holders of the
164 business entity's:
165 (I) shares or beneficial interests; and
166 (II) on an annual basis;
167 (D) (I) not more than 10% of the following is held directly, indirectly, or constructively
168 by a single person:
169 (Aa) the voting power of the business entity; or
170 (Bb) the value of the shares or beneficial interests of the business entity; or
171 (II) the shares of the business entity are regularly traded on an established securities
172 market; and
173 (E) the business entity is organized in a country that has a tax treaty with the United
174 States; or
175 (ii) a listed Australian property trust.
176 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
177 commission may make rules defining:
178 (i) "cash or cash equivalents";
179 (ii) "established securities market"; or
180 (iii) "listed Australian property trust."
181 (18) "Income" includes losses.
182 (19) "Internal Revenue Code" means Title 26 of the United States Code as effective
183 during the year in which Utah taxable income is determined.
184 (20) "Nonbusiness income" means the same as that term is defined in Section
185 59-7-302.
186 (21) "Real estate investment trust" means the same as that term is defined in Section
187 856, Internal Revenue Code.

(22) "Related expenses" means:

(a) expenses directly attributable to nonbusiness income; and

(b) the portion of interest or other expense indirectly attributable to both nonbusiness and business income that bears the same ratio to the aggregate amount of such interest or other expense, determined without regard to this Subsection (22), as the average amount of the asset producing the nonbusiness income bears to the average amount of all assets of the taxpayer within the taxable year.

(23) "S corporation" means an S corporation as defined in Section 1361, Internal Revenue Code.

(24) "Safe harbor lease" means a lease that qualified as a safe harbor lease under Section 168, Internal Revenue Code.

(25) "State of the United States" includes any of the 50 states or the District of Columbia.

(26) (a) "Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the adjusted income is computed.

(b) In the case of a return made for a fractional part of a year under this chapter or under rules prescribed by the commission, "taxable year" includes the period for which such return is made.

(27) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

(28) "Threshold level of business activity" means business activity in the United States equal to or greater than 20% of the corporation's total business activity as determined under Section 59-7-401.

(29) (a) "Unadjusted income" means federal taxable income as determined on a separate return basis before intercompany eliminations as determined by the Internal Revenue Code, before the net operating loss deduction and special deductions for dividends received.

(b) For the last taxable year of a taxpayer beginning on or before December 31, 2017, "unadjusted income" includes deferred foreign income described in Section 965(a), Internal Revenue Code.

(c) "Unadjusted income" includes global intangible low-taxed income described in Section 951A, Internal Revenue Code.

(30) (a) "Unitary group" means a group of corporations that:

(i) are related through common ownership; and

(ii) by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors:

(A) centralized management;

(B) functional integration; and

(C) economies of scale.

(b) "Unitary group" includes a captive real estate investment trust.

(c) "Unitary group" does not include an S corporation.

(31) "United States" includes the 50 states and the District of Columbia.

(32) "Utah net loss" means the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.

(33) "Utah net loss deduction" means the amount of Utah net losses from other taxable years that a taxpayer may carry forward to the current taxable year in accordance with Section 59-7-110.

(34) (a) "Utah taxable income" means Utah taxable income before net loss deduction less Utah net loss deduction.

(b) "Utah taxable income" includes income from tangible or intangible property located or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

(35) "Utah taxable income before net loss deduction" means apportioned income plus nonbusiness income allocable to Utah net of related expenses.

(36) (a) "Water's edge combined report" means a report combining the income and activities of:

(i) all members of a unitary group that are:

(A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code, in accordance with Subsection (36)(b); and

(B) corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and

(ii) an affiliated group electing to file a water's edge combined report under Subsection

250 59-7-402(2).

251 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
252 Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a
253 unitary group.

254 (37) "Worldwide combined report" means the combination of the income and activities
255 of all members of a unitary group irrespective of the country in which the corporations are
256 incorporated or conduct business activity.

257 Section 2. Section **59-7-106** is amended to read:

258 **59-7-106. Subtractions from unadjusted income.**

259 (1) In computing adjusted income, the following amounts shall be subtracted from
260 unadjusted income:

261 (a) the foreign dividend gross-up included in gross income for federal income tax
262 purposes under Section 78, Internal Revenue Code;

263 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the
264 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the
265 taxable year for which the net capital loss is incurred;

266 (c) the decrease in salary expense deduction for federal income tax purposes due to
267 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

268 (d) the decrease in qualified research and basic research expense deduction for federal
269 income tax purposes due to claiming the federal credit for increasing research activities under
270 Section 41, Internal Revenue Code;

271 (e) the decrease in qualified clinical testing expense deduction for federal income tax
272 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for
273 rare diseases or conditions under Section 45C, Internal Revenue Code;

274 (f) any decrease in any expense deduction for federal income tax purposes due to
275 claiming any other federal credit;

276 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and
277 (2)(b);

278 (h) any income on the federal corporation income tax return that has been previously
279 taxed by Utah;

280 (i) an amount included in federal taxable income that is due to a refund of a tax,

281 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation
282 tax:

283 (i) if that tax is imposed for the privilege of:

284 (A) doing business; or

285 (B) exercising a corporate franchise;

286 (ii) if that tax is paid by the corporation to:

287 (A) Utah;

288 (B) another state of the United States;

289 (C) a foreign country;

290 (D) a United States possession; or

291 (E) the Commonwealth of Puerto Rico; and

292 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

293 (j) a charitable contribution, to the extent the charitable contribution is allowed as a
294 subtraction under Section 59-7-109;

295 (k) subject to Subsection (3), 50% of a dividend considered to be received or received
296 from a subsidiary that:

297 (i) is a member of the unitary group;

298 (ii) is organized or incorporated outside of the United States; and

299 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

300 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
301 foreign operating company;

302 (m) the amount of gain or loss that is included in unadjusted income but not recognized
303 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
304 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
305 with Section 338(h)(10), Internal Revenue Code;

306 (n) the amount of gain or loss that is included in unadjusted income but not recognized
307 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
308 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
309 Revenue Code, has been made for federal purposes;

310 (o) subject to Subsection (5), an adjustment to the following due to a difference
311 between basis for federal purposes and basis as computed under Section 59-7-107:

- 312 (i) an amortization expense;
- 313 (ii) a depreciation expense;
- 314 (iii) a gain;
- 315 (iv) a loss; or
- 316 (v) an item similar to Subsections (1)(o)(i) through (iv);
- 317 (p) an interest expense that is not deducted on a federal corporation income tax return
- 318 under Section 265(b) or 291(e), Internal Revenue Code;
- 319 (q) 100% of dividends received from a subsidiary that is an insurance company if that
- 320 subsidiary that is an insurance company is:
- 321 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
- 322 (ii) under common ownership;
- 323 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
- 324 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
- 325 53B-8a-102.5:
- 326 (i) that the corporation or a person other than the corporation makes into an account
- 327 owned by the corporation during the taxable year;
- 328 (ii) to the extent that neither the corporation nor the person other than the corporation
- 329 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
- 330 return; and
- 331 (iii) to the extent the qualified investment does not exceed the maximum amount of the
- 332 qualified investment that may be subtracted from unadjusted income for a taxable year in
- 333 accordance with Subsection 53B-8a-106(1);
- 334 (s) for a corporation that makes a donation, as that term is defined in Section
- 335 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the
- 336 amount of the donation to the extent that the corporation did not deduct the donation on a
- 337 federal income tax return;
- 338 (t) for purposes of income included in a combined report under Part 4, Combined
- 339 Reporting, the entire amount of the dividends a member of a unitary group receives or is
- 340 considered to receive from a captive real estate investment trust; ~~and~~
- 341 (u) the increase in income for federal income tax purposes due to claiming a:
- 342 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

(ii) qualified zone academy bond under Section 1397E, Internal Revenue Code[-]; and
(v) the amount of global intangible low-taxed income described in Section 951A,
Internal Revenue Code, that is included in unadjusted income.

(2) For purposes of Subsection (1)(b):

(a) the subtraction shall be made by claiming the subtraction on a return filed:

(i) under this chapter for the taxable year for which the net capital loss is incurred; and

(ii) by the due date of the return, including extensions; and

(b) a net capital loss for a taxable year shall be:

(i) subtracted for the taxable year for which the net capital loss is incurred; or

(ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue
Code.

(3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a
taxpayer shall first subtract from a dividend considered to be received or received an expense
directly attributable to that dividend.

(b) For purposes of Subsection (3)(a), the amount of an interest expense that is
considered to be directly attributable to a dividend is calculated by multiplying the interest
expense by a fraction:

(i) the numerator of which is the taxpayer's average investment in the dividend paying
subsidiaries; and

(ii) the denominator of which is the taxpayer's average total investment in assets.

(c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in
determining income apportionable to this state, a portion of the factors of a foreign subsidiary
that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the
combined report factors as provided in this Subsection (3)(c).

(ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign
subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be
included in the combined report factors is calculated by multiplying each factor of the foreign
subsidiary by a fraction:

(A) not to exceed 100%; and

(B) (I) the numerator of which is the amount of the dividend paid by the foreign
subsidiary that is included in adjusted income; and

(II) the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code.

(4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under Subsection (1)(l):

(i) if the taxpayer elects to file a worldwide combined report as provided in Section 59-7-403; or

(ii) for the following:

(A) income generated from intangible property; or

(B) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.

(b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating company:

(i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

(ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a transaction that occurs between members of a unitary group.

(c) For purposes of the subtraction provided for in Subsection (1)(l), in determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentages as the foreign operating company's adjusted income is included in the combined adjusted income.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes:

(i) income generated from intangible property; or

(ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.

(5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax credit is claimed if:

(i) there is a reduction in federal basis for a federal tax credit; and

(ii) there is no corresponding tax credit allowed in this state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)

405 through (iv).

406 Section 3. Section **59-10-114** is amended to read:

407 **59-10-114. Additions to and subtractions from adjusted gross income of an**
408 **individual.**

409 (1) There shall be added to adjusted gross income of a resident or nonresident
410 individual:

411 (a) a lump sum distribution that the taxpayer does not include in adjusted gross income
412 on the taxpayer's federal individual income tax return for the taxable year;

413 (b) the amount of a child's income calculated under Subsection (4) that:

414 (i) a parent elects to report on the parent's federal individual income tax return for the
415 taxable year; and

416 (ii) the parent does not include in adjusted gross income on the parent's federal
417 individual income tax return for the taxable year;

418 (c) (i) a withdrawal from a medical care savings account and any penalty imposed for
419 the taxable year if:

420 (A) the resident or nonresident individual does not deduct the amounts on the resident
421 or nonresident individual's federal individual income tax return under Section 220, Internal
422 Revenue Code;

423 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

424 (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a
425 return the resident or nonresident individual files under this chapter;

426 (ii) a disbursement required to be added to adjusted gross income in accordance with
427 Subsection 31A-32a-105(3); or

428 (iii) an amount required to be added to adjusted gross income in accordance with
429 Subsection 31A-32a-105(5)(c);

430 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,
431 from the account of a resident or nonresident individual who is an account owner as defined in
432 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount
433 withdrawn from the account of the resident or nonresident individual who is the account
434 owner:

435 (i) is not expended for:

(A) higher education costs as defined in Section 53B-8a-102.5; or

(B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(ii) is:

(A) subtracted by the resident or nonresident individual:

(I) who is the account owner; and

(II) on the resident or nonresident individual's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident individual who is the account owner to claim a tax credit under Section 59-10-1017;

(e) except as provided in Subsection (5), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness:

(i) issued by one or more of the following entities:

(A) a state other than this state;

(B) the District of Columbia;

(C) a political subdivision of a state other than this state; or

(D) an agency or instrumentality of an entity described in Subsections (1)(e)(i)(A) through (C); and

(ii) to the extent the interest is not included in adjusted gross income on the taxpayer's federal income tax return for the taxable year;

(f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a resident trust of income that was taxed at the trust level for federal tax purposes, but was subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

(g) any distribution received by a resident beneficiary of a nonresident trust of undistributed distributable net income realized by the trust on or after January 1, 2004, if that undistributed distributable net income was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by any state, with undistributed distributable net income considered to be distributed from the most recently accumulated undistributed distributable net income; and

467 (h) any adoption expense:

468 (i) for which a resident or nonresident individual receives reimbursement from another

469 person; and

470 (ii) to the extent to which the resident or nonresident individual subtracts that adoption

471 expense:

472 (A) on a return filed under this chapter for a taxable year beginning on or before

473 December 31, 2007; or

474 (B) from federal taxable income on a federal individual income tax return.

475 (2) There shall be subtracted from adjusted gross income of a resident or nonresident

476 individual:

477 (a) the difference between:

478 (i) the interest or a dividend on an obligation or security of the United States or an

479 authority, commission, instrumentality, or possession of the United States, to the extent that

480 interest or dividend is:

481 (A) included in adjusted gross income for federal income tax purposes for the taxable

482 year; and

483 (B) exempt from state income taxes under the laws of the United States; and

484 (ii) any interest on indebtedness incurred or continued to purchase or carry the

485 obligation or security described in Subsection (2)(a)(i);

486 (b) for taxable years beginning on or after January 1, 2000, if the conditions of

487 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

488 (i) during a time period that the Ute tribal member resides on homesteaded land

489 diminished from the Uintah and Ouray Reservation; and

490 (ii) from a source within the Uintah and Ouray Reservation;

491 (c) an amount received by a resident or nonresident individual or distribution received

492 by a resident or nonresident beneficiary of a resident trust:

493 (i) if that amount or distribution constitutes a refund of taxes imposed by:

494 (A) a state; or

495 (B) the District of Columbia; and

496 (ii) to the extent that amount or distribution is included in adjusted gross income for

497 that taxable year on the federal individual income tax return of the resident or nonresident

498 individual or resident or nonresident beneficiary of a resident trust;

499 (d) the amount of a railroad retirement benefit:

500 (i) paid:

501 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

502 seq.;

503 (B) to a resident or nonresident individual; and

504 (C) for the taxable year; and

505 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on

506 that resident or nonresident individual's federal individual income tax return for that taxable

507 year;

508 (e) an amount:

509 (i) received by an enrolled member of an American Indian tribe; and

510 (ii) to the extent that the state is not authorized or permitted to impose a tax under this

511 part on that amount in accordance with:

512 (A) federal law;

513 (B) a treaty; or

514 (C) a final decision issued by a court of competent jurisdiction;

515 (f) an amount received:

516 (i) for the interest on a bond, note, or other obligation issued by an entity for which

517 state statute provides an exemption of interest on its bonds from state individual income tax;

518 (ii) by a resident or nonresident individual;

519 (iii) for the taxable year; and

520 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's

521 federal income tax return for the taxable year; ~~and~~

522 (g) the amount of all income, including income apportioned to another state, of a

523 nonmilitary spouse of an active duty military member if:

524 (i) both the nonmilitary spouse and the active duty military member are nonresident

525 individuals;

526 (ii) the active duty military member is stationed in Utah;

527 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.

528 4001(a)(2); and

(iv) the income is included in adjusted gross income for federal income tax purposes for the taxable year[-]; and

(h) the amount of global intangible low-taxed income described in Section 951A, Internal Revenue Code, that is included in adjusted gross income.

(3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:

- (i) the taxpayer is a Ute tribal member; and
- (ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (3).

(b) The agreement described in Subsection (3)(a):

- (i) may not:
 - (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
 - (B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(b); or

- (C) affect the power of the state to establish rates of taxation; and
- (ii) shall:
 - (A) provide for the implementation of the subtraction described in Subsection (2)(b);
 - (B) be in writing;
 - (C) be signed by:
 - (I) the governor; and
 - (II) the chair of the Business Committee of the Ute tribe;
 - (D) be conditioned on obtaining any approval required by federal law; and
 - (E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (3) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and

560 Ouray Reservation; and

561 (ii) that are substantially similar to how adjusted gross income derived from Utah
562 sources is determined under Section 59-10-117.

563 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

564 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
565 Interest and Dividends; or

566 (ii) (A) a form designated by the commission in accordance with Subsection
567 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
568 individual income taxes the information contained on 2000 Form 8814 is reported on a form
569 other than Form 8814; and

570 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
571 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
572 being substantially similar to 2000 Form 8814 if for purposes of federal individual income
573 taxes the information contained on 2000 Form 8814 is reported on a form other than Form
574 8814.

575 (b) The amount of a child's income added to adjusted gross income under Subsection
576 (1)(b) is equal to the difference between:

577 (i) the lesser of:

578 (A) the base amount specified on Form 8814; and

579 (B) the sum of the following reported on Form 8814:

580 (I) the child's taxable interest;

581 (II) the child's ordinary dividends; and

582 (III) the child's capital gain distributions; and

583 (ii) the amount not taxed that is specified on Form 8814.

584 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences
585 of indebtedness issued by an entity described in Subsections (1)(e)(i)(A) through (D) may not
586 be added to adjusted gross income of a resident or nonresident individual if, as annually
587 determined by the commission:

588 (a) for an entity described in Subsection (1)(e)(i)(A) or (B), the entity and all of the
589 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
590 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(e)(i)(C) or (D), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

Section 4. Section **59-10-202** is amended to read:

59-10-202. Additions to and subtractions from unadjusted income of a resident or nonresident estate or trust.

(1) There shall be added to unadjusted income of a resident or nonresident estate or trust:

(a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining adjusted gross income;

(b) except as provided in Subsection (3), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness:

(i) issued by one or more of the following entities:

(A) a state other than this state;

(B) the District of Columbia;

(C) a political subdivision of a state other than this state; or

(D) an agency or instrumentality of an entity described in Subsections (1)(b)(i)(A) through (C); and

(ii) to the extent the interest is not included in federal taxable income on the taxpayer's federal income tax return for the taxable year;

(c) any portion of federal taxable income for a taxable year if that federal taxable income is derived from stock:

(i) in an S corporation; and

(ii) that is held by an electing small business trust;

(d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident estate or trust that is an account owner as defined

in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or trust that is the account owner:

(i) is not expended for:

(A) higher education costs as defined in Section 53B-8a-102.5; or

(B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(ii) is:

(A) subtracted by the resident or nonresident estate or trust:

(I) that is the account owner; and

(II) on the resident or nonresident estate's or trust's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident estate or trust that is the account owner to claim a tax credit under Section 59-10-1017; and

(e) any fiduciary adjustments required by Section 59-10-210.

(2) There shall be subtracted from unadjusted income of a resident or nonresident estate or trust:

(a) the interest or a dividend on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent that interest or dividend is included in gross income for federal income tax purposes for the taxable year but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) income of an irrevocable resident trust if:

(i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;

(ii) the trust first became a resident trust on or after January 1, 2004;

- (iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;
- (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);
- (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and
- (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2)(b), and by any expenses incurred in the production of income described in this Subsection (2)(b), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income;
- (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or nonresident estate or trust derived from a deceased Ute tribal member:
- (i) during a time period that the Ute tribal member resided on homesteaded land diminished from the Uintah and Ouray Reservation; and
- (ii) from a source within the Uintah and Ouray Reservation;
- (d) any amount:
- (i) received by a resident or nonresident estate or trust;
- (ii) that constitutes a refund of taxes imposed by:
- (A) a state; or
- (B) the District of Columbia; and
- (iii) to the extent that amount is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts for that taxable year;
- (e) the amount of a railroad retirement benefit:
- (i) paid:
- (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;
- (B) to a resident or nonresident estate or trust derived from a deceased resident or nonresident individual; and
- (C) for the taxable year; and
- (ii) to the extent that railroad retirement benefit is included in total income on that

684 resident or nonresident estate's or trust's federal tax return for estates and trusts;
685 (f) an amount:
686 (i) received by a resident or nonresident estate or trust if that amount is derived from a
687 deceased enrolled member of an American Indian tribe; and
688 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
689 part on that amount in accordance with:
690 (A) federal law;
691 (B) a treaty; or
692 (C) a final decision issued by a court of competent jurisdiction;
693 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section
694 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the
695 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for
696 the taxable year;
697 (h) any fiduciary adjustments required by Section 59-10-210; ~~and~~
698 (i) an amount received:
699 (i) for the interest on a bond, note, or other obligation issued by an entity for which
700 state statute provides an exemption of interest on its bonds from state individual income tax;
701 (ii) by a resident or nonresident estate or trust;
702 (iii) for the taxable year; and
703 (iv) to the extent the amount is included in federal taxable income on the taxpayer's
704 federal income tax return for the taxable year~~[-]; and~~
705 (j) the amount of global intangible low-taxed income described in Section 951A,
706 Internal Revenue Code, that is included in unadjusted income.
707 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences
708 of indebtedness issued by an entity described in Subsections (1)(b)(i)(A) through (D) may not
709 be added to unadjusted income of a resident or nonresident estate or trust if, as annually
710 determined by the commission:
711 (a) for an entity described in Subsection (1)(b)(i)(A) or (B), the entity and all of the
712 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on
713 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or
714 (b) for an entity described in Subsection (1)(b)(i)(C) or (D), the following do not

715 impose a tax based on income on any part of the bonds, notes, and other evidences of
716 indebtedness of this state:

- 717 (i) the entity; or
- 718 (ii) (A) the state in which the entity is located; or
- 719 (B) the District of Columbia, if the entity is located within the District of Columbia.

720 (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

- 721 (i) the income is derived from a deceased Ute tribal member; and
- 722 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
723 requirements of this Subsection (4).

724 (b) The agreement described in Subsection (4)(a):

- 725 (i) may not:
 - 726 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
 - 727 (B) provide a subtraction under this section greater than or different from the
728 subtraction described in Subsection (2)(c); or
 - 729 (C) affect the power of the state to establish rates of taxation; and
- 730 (ii) shall:
 - 731 (A) provide for the implementation of the subtraction described in Subsection (2)(c);
 - 732 (B) be in writing;
 - 733 (C) be signed by:
 - 734 (I) the governor; and
 - 735 (II) the chair of the Business Committee of the Ute tribe;
 - 736 (D) be conditioned on obtaining any approval required by federal law; and
 - 737 (E) state the effective date of the agreement.

738 (c) (i) The governor shall report to the commission by no later than February 1 of each
739 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
740 in effect.

- 741 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
742 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
743 after the January 1 following the termination of the agreement.

744 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,
745 Utah Administrative Rulemaking Act, the commission may make rules:

746 (i) for determining whether income is derived from a source within the Uintah and
747 Ouray Reservation; and

748 (ii) that are substantially similar to how adjusted gross income derived from Utah
749 sources is determined under Section 59-10-117.

750 Section 5. **Retrospective operation.**

751 This bill has retrospective operation for a taxable year beginning on or after January 1,
752 2019.